

House Bill 430 (AS PASSED HOUSE AND SENATE)

By: Representatives Ralston of the 7th, Roberts of the 154th, Hatfield of the 177th, and Crawford of the 127th

A BILL TO BE ENTITLED
AN ACT

To amend Title 44 of the Official Code of Georgia Annotated, relating to property, so as to clarify the scope of the provisions applicable to the acquisition of title to land by adverse possession, the acquisition of easements and private ways through prescription, and the acquisition of land by railroad corporations or railroad companies; to exclude property of a railroad corporation or railroad company from the type of property by which these methods of acquiring property are applicable; to provide for legislative findings and purpose; to provide for statutory construction; to amend Article 2 of Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to presumptions and estoppel, so as to provide that occupancy of a railroad right of way is by permission; to amend Code Section 46-8-100 of the Official Code of Georgia Annotated, relating to the general powers of railroad companies, so as to provide that issues arising as to the dimensions of property acquired by a railroad corporation or railroad company prior to 1913 shall be determined by reference to the official map filed with the Interstate Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913; to provide for each railroad corporation and railroad company to record such official map in the superior court in which the land is situated; to provide for courts to take judicial notice of the information on such official map that has been properly filed and recorded; to provide for certain property interest for vested interest in property; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

(a) The General Assembly finds that the railroads and their rights of way in Georgia:

- (1) Are essential to the continued viability of this state;
- (2) Are valuable resources which must be preserved and protected;
- (3) Are essential for the economic growth and development of this state;

(4) Provide a necessary means of transporting raw materials, agricultural products, other finished products, and consumer goods and are also essential for the safe passage of hazardous materials;

(5) Relieve congestion on the highways and keep dangerous products and materials off our highways;

(6) Are vital for national defense and national security; and

(7) Provide the most efficient means of transportation through the state, thus minimizing air pollution and fuel consumption.

(b) The purpose of this Act is to protect the rights of way of railroads from loss by claims of adverse possession or other claims by prescription and to recognize the dimensions of these rights of way as they were identified and defined nearly 100 years ago.

SECTION 2.

Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by adding a new Code section to read as follows:

"44-5-161.1.

Any title or interest in property obtained pursuant to provisions of this title that relate to adverse possession and corporeal rights, private ways, or by any other Code section or other provision or law by which an interest in property may be obtained by prescription shall not affect a right of way owned by a railroad corporation or railroad company until such interest or title is perfected through a judicial proceeding in a manner consistent with other provisions of this Code."

SECTION 3.

Said title is further amended by revising Code Section 44-5-163, relating to when adverse possession for 20 years confers title, as follows:

"44-5-163.

Possession of real property in conformance with the requirements of Code Section 44-5-161 for a period of 20 years shall confer good title by prescription to the property against everyone except the state and those persons laboring under the disabilities stated in Code Section 44-5-170 and railroad corporations or railroad companies as defined in Code Section 46-1-1 for railroad property that has not been the subject of a formal abandonment before the Surface Transportation Board, the track has not been removed, and the railroad corporation or railroad company has made a documented decision that it will not restore operations."

SECTION 4.

Said title is further amended by revising Code Section 44-5-164, relating to when adverse possession for seven years confers title, as follows:

"44-5-164.

Possession of real property under written evidence of title in conformance with the requirements of Code Section 44-5-161 for a period of seven years shall confer good title by prescription to the property against everyone except the state and those persons laboring under the disabilities stated in Code Section 44-5-170 and railroad corporations or railroad companies as defined in Code Section 46-1-1 for railroad property that has not been the subject of a formal abandonment before the Surface Transportation Board, the track has not been removed, and the railroad corporation or railroad company has made a documented decision that it will not restore operations, provided that, if the written title is forged or fraudulent and if the person claiming adverse possession had actual notice of such forgery or fraud when he or she commenced his or her possession, no prescription may be based on such possession."

SECTION 5.

Said title is further amended by revising Code Section 44-5-175, relating to prescription involving incorporeal rights, as follows:

"44-5-175.

An incorporeal right which may be lawfully granted, such as a right of way or the right to throw water upon the land of another, may be acquired by prescription against everyone except this state, those persons laboring under the disabilities stated in Code Section 44-5-170, and railroad corporations or railroad companies as defined in Code Section 46-1-1 for railroad property that has not been the subject of a formal abandonment before the Surface Transportation Board, the track has not been removed, and the railroad corporation or railroad company has made a documented decision that it will not restore operations."

SECTION 6.

Said title is further amended by revising Code Section 44-9-1, relating to the methods of acquiring private ways, as follows:

"44-9-1.

The right of private way over another's land may arise from an express grant, from prescription by seven years' uninterrupted use through improved lands or by 20 years' use through wild lands, by implication of law when the right is necessary to the enjoyment of lands granted by the same owner, or by compulsory purchase and sale through the superior

1 court in the manner prescribed by Article 3 of this chapter, except that no right of private
2 way may be acquired by prescription over the lands of this state, those persons laboring
3 under the disabilities stated in Code Section 44-5-170, and railroad corporations or railroad
4 companies as defined in Code Section 46-1-1 for railroad property that has not been the
5 subject of a formal abandonment before the Surface Transportation Board, the track has not
6 been removed, and the railroad corporation or railroad company has made a documented
7 decision that it will not restore operations."

8 SECTION 7.

9 Said title is further amended by revising Code Section 44-9-54, relating generally to the
10 establishment of private ways by prescription, as follows:

11 "44-9-54.

12 Except as to lands of this state, those persons laboring under disabilities stated in Code
13 Section 44-5-170, and railroad corporations or railroad companies as defined in Code
14 Section 46-1-1, for railroad property that has not been the subject of a formal abandonment
15 before the Surface Transportation Board, the track has not been removed, and the railroad
16 corporation or railroad company has made a documented decision that it will not restore
17 operations whenever ~~Whenever~~ a private way has been in constant and uninterrupted use
18 for seven or more years and no legal steps have been taken to abolish it, it shall not be
19 lawful for anyone to interfere with that private way."

20 SECTION 8.

21 Article 2 of Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to
22 presumptions and estoppel, is amended by adding a new Code section to read as follows:

23 "24-4-23.2.

24 In any action to establish a right, title, or interest in or to real property that is a part of a
25 railroad right of way, including a right of ingress or egress, and such claim is based upon
26 occupancy of the railroad right of way by a person or entity other than the railroad
27 corporation or railroad company, there is a presumption that any such occupancy of the
28 railroad right of way is with the permission of the railroad corporation or railroad company.
29 Such presumption may only be rebutted by proof of actual written notice to the railroad
30 corporation or railroad company that the occupancy of the railroad right of way is based
31 upon a claimed right in or to that portion of the right of way at issue."

32 SECTION 9.

33 Code Section 46-8-100 of the Official Code of Georgia Annotated, relating to the general
34 powers of railroad companies, is amended by revising paragraph (3) as follows:

"(3) To acquire, purchase, hold, and use all such real estate and other property as may be necessary for the construction and maintenance of said road and of the stations, wharves, docks, terminal facilities, and all other accommodations necessary to accomplish the object of the corporation; and to condemn, lease, or buy any land necessary for its use; provided, however, that to the extent an issue arises over the dimensions of any such acquisition by a railroad corporation or railroad company which occurred prior to 1913, those dimensions shall be determined by reference to the documents evidencing any such transaction and by examining the official map of the railroad filed with the Interstate Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913, Stat. 701, as amended, and such depictions contained on such official railroad map shall be conclusive as to the dimensions of any acquisition as of the date of such railroad map; provided, further, that each railroad corporation and railroad company shall file and record such official map of the railroad with the superior court for the county in which such land is situated that is depicted on such official railroad map. Any court of this state shall take judicial notice of the information set forth in any such official map properly filed and recorded by such railroad corporation or railroad company."

SECTION 10.

Said title is further amended by revising Code Section 44-5-40, relating to conveyance of future interests or estates, as follows:

"44-5-40.

Future and vested interests in property or estates are descendible, devisable, and alienable in the same manner as estates in possession."

SECTION 11.

All laws and parts of laws in conflict with this Act are repealed.